



## Access to Employee Exposure and Medical Records: OSHA Standard 1910.20<sup>1</sup>

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This is a condensation of Standard 1910.20 of the Occupational Safety and Health Act. Its purpose is to insure that employees and former employees and their representatives, as well as OSHA, will have access to employee exposure and medical records. This document is not intended to be totally inclusive but rather to highlight the information and requirements in the complete OSHA standard that owners of agricultural businesses should understand.

Below are detailed the policies and procedures to be followed in maintaining relevant documents and in making them available. Most important is maintaining these records. Records must be maintained for thirty years with few exceptions.

### SCOPE

These rules apply to each employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or their analyses, pertaining to their exposure to toxic substances or harmful physical agents. All such records and analyses are covered, whether or not the records are related to specific occupational safety and health standards and regardless of the manner in which they are made or maintained.

### GENERAL DISCLAIMER

Except as expressly provided, nothing in Part 1910.20 is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, or the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or to affect existing legal obligations concerning the protection of trade secret information.

### CRITICAL DEFINITIONS

**Access.** The right and opportunity to examine and copy.

**Analysis using exposure or medical records.** Any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

**Designated representative.** Any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analyses using exposure or medical records, a recognized

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or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

**Employee.** A current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of a deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

**Employee exposure record.** A record containing environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained; biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs; material safety data sheets indicating that the material may pose a hazard to human health; or, in the absence of the above, a chemical inventory or any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

**Employee medical record.** A record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel or technician, including medical and employment questionnaires or histories (including job description and occupational exposures), the results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for the purpose of establishing a baseline or detecting occupational illnesses and all biological monitoring not defined as an "employee exposure record"), medical opinions, diagnoses, progress notes, and recommendations, first aid records, descriptions of treatments and prescriptions, and employee medical complaints.

Employee medical record **does not** include medical information in the form of physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, or records concerning health insurance claims if maintained separately from the employer's medical program and its records and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number,

payroll number, etc.), or records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence, or records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

**Employer.** A current employer, a former employer, or a successor employer.

**Exposure or exposed.** An employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

**Health Professional.** A physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, providing medical or other occupational health services to exposed employees.

**Record.** Any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing).

**Specific chemical identity.** A chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

**Specific written consent.** A written authorization containing the name and signature of the employee authorizing the release of medical information, the date of the written authorization, the name of the individual or organization that is authorized to release the medical information, the name of the designated representative (individual or organization) that is authorized to receive the released information, a general description of the medical information that is authorized to be released, a general description of the purpose for the release of the medical information, and a date or condition upon which the written authorization will expire (if less than one year).

A written authorization does not operate to authorize the release of medical information not in existence on

the date of written authorization, unless the release of future information is expressly authorized, and does not operate for more than one year from the date of written authorization; written authorization may be revoked in writing prospectively at any time.

**Toxic substance or harmful physical agent.** Any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo- or hyperbaric pressure, etc.) which is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS), has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to, the employer, or is the subject of a material safety data sheet, kept by or known to the employer, indicating that the material may pose a hazard to human health.

**Trade secret.** Any confidential formula, pattern, process, device, or information or compilation of information that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

## RECORDKEEPING

### Disclaimer

Nothing in this section is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, with the exception that chest X-ray films must be preserved in their original state.

### Employee Medical Records

Except for first aid records (if made onsite by a non-physician) and health insurance claims records maintained separately from the employer's medical program and its records, the medical record for each employee employed for a year or more must be preserved and maintained throughout the period of employment and for at least 30 years thereafter. The medical records of employees who have worked for less than one year need not be retained beyond the term of employment if they are provided to the employee upon termination.

## Employee Exposure Records

Employee exposure records must be preserved and maintained for at least 30 years, with the following exceptions:

- background data to environmental monitoring or measuring need be retained for only one year, so long as the sampling results, the sampling plan, a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results are retained for at least 30 years;
- a record of the identity (chemical name if known) of a substance or agent, where it was used, and when it was used must be retained for at least 30 years; and
- the biological monitoring results designated as exposure records by specific occupational safety and health standards must be preserved and maintained as required by the specific standard.

## Analyses

Each analysis using exposure or medical records must be preserved and maintained for at least 30 years.

## Transfer and Disposal of Records

Whenever an employer is ceasing to do business, the employer must transfer all pertinent records to the successor employer, who will receive and maintain them, unless there is no successor employer, in which case the employer must notify affected current employees of their rights of access to records at least three months prior to the cessation of business.

In the latter instance, or in any other case where an employer intends to dispose of any records required to be preserved for at least 30 years, the employer must transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) (if so required by a specific occupational safety and health standard) or notify the Director of NIOSH in writing of the impending disposal of records at least three months prior to the disposal of the records.

Where an employer regularly disposes of records required to be preserved for at least 30 years, the employer may, with at least three months notice, annually notify the Director of NIOSH of the records intended to be disposed of in the coming year.

## **EMPLOYEE ACCESS**

### **Disclaimer**

Nothing in this section is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this section.

### **Notification of Employee Access**

At the time an employee begins employment, and at least annually thereafter, the employer must inform him or her of the existence, location, and availability of pertinent records, the person responsible for maintaining and providing access to the records and the employee's rights of access.

Employers must keep a copy of Standard 1910.20 and its appendices, and make copies readily available, upon request, to employees. They must also distribute to current employees any informational materials concerning this section which are made available to them by OSHA.

### **General Matters**

Whenever an employee or designated representative requests access to a record, the employer must assure that access is provided in a reasonable time, place, and manner.

### **Time of Access**

If the employer cannot reasonably provide access within 15 working days, he or she must, within the 15 working days, notify the employee or designated representative of the reason for the delay and the earliest date when the record can be made available.

### **Required Information**

Employers may require from the employee or designated representative only such information as is necessary to enable the employer to locate or identify the records being requested (e.g., dates and locations of work during the time period in question).

### **Manner of Access**

Whenever an employee or designated representative requests a copy of a record, the employer must, within 15 days, either:

- provide a copy of the record without cost,
- provide the necessary mechanical copying facilities without cost, or
- offer the record on loan for a reasonable time to enable a copy to be made.

(In the case of an original X-ray, however, the employer may restrict access to on-site examination or make other suitable arrangements for the temporary loan of the X-ray.)

### **Access to Employee Exposure Records**

Each employer must, upon request of any employee or designated representative, assure access to relevant employee exposure records, that is, any record which measures or monitors the amount of a toxic substance or harmful physical agent to which the employee is or has been exposed.

In the absence of direct records, the employer must provide records of other employees with relevant or similar past or present job duties or working conditions, to the extent necessary to reasonably indicate the amount and nature of the toxic substances or harmful physical agents to which the employee is or has been subjected.

Employees and their representatives must also be afforded access to records necessary to indicate the amount and nature of toxic substances or harmful agents at workplaces or under working conditions to which the employee is being assigned or transferred.

Requests by designated representatives for unconsented access to employee exposure records must be in writing and must reasonably specify the records requested and the occupational health need for gaining access.

### **Access to Employee Medical Records**

Each employer must, upon request, assure to each employee (or designated representative who has been given the employee's specific written consent) access to the employee medical records of which that employee is the subject. (Following this document is a sample form which may be used to establish specific written consent for access to employee medical records.)

Whenever access to employee medical records is requested, a physician representing the employer may

recommend that the employee or designated representative review and discuss the records requested with the physician, accept a summary of material facts and opinions in lieu of the records requested or accept release of the requested records only to a physician or other designated representative.

An employer may refuse an employee direct access to specific information within a medical record if information regarding a specific diagnosis of a terminal illness or a psychiatric condition is involved and a physician representing the employer believes such access could be detrimental to the employee's health. The employer may inform the employee that access will only be provided to a designated representative, then must assure that access, even when it is known that the designated representative will give the information to the employee.

A physician, nurse, or other responsible health care worker maintaining employee medical records may delete from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

### **Access to Analyses**

Each employer must, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.), the employer must assure that personal identifiers are removed before access is provided. If the employer can demonstrate such removal is not feasible, access to the personally identifiable portions of the analysis need not be provided.

### **OSHA ACCESS**

Each employer must, upon request, and without derogation of any rights under the Constitution or OSHA Act that the employer chooses to exercise, assure the prompt access of representatives of OSHA to employee exposure and medical records and to analyses using exposure or medical records.

Whenever OSHA seeks access to personally identifiable employee medical information by presenting to the employer a written access order, the employer must prominently post a copy of the order and its accompanying cover letter for at least 15 working days.

### **TRADE SECRET EXEMPTIONS**

#### **Disclaimer**

Nothing in this section is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.

#### **General**

An employer may delete from requested records any trade secret data which discloses manufacturing processes or the percentage of a chemical substance in a mixture, as long as the requesting health professional, employee, or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place or time of exposure to a toxic substance or harmful physical agent, the employer must provide alternative information which is sufficient to permit the requesting party to identify where and when exposure occurred.

The employer may withhold the specific chemical identity of a toxic substance from a disclosable record provided the claim that the information withheld is a trade secret can be supported, all other available information on the properties and effects of the toxic substance is disclosed and the requesting party is informed by the employer that the specific chemical identity is being withheld as a trade secret.

#### **Exceptions**

##### **Medical Emergencies**

Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a toxic substance is necessary for emergency or first aid treatment, the employer must immediately disclose the specific chemical identity of a trade secret chemical to the treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement, as soon as circumstances permit.

## Non-emergency Situations

In non-emergency situations, an employer must, upon written request, disclose an otherwise withholdable specific chemical identity to a health professional, employee, or designated representative, if the request specifies with reasonable detail that the information is necessary:

- to assess the hazards of the chemicals to which employees will be exposed,
- to conduct or assess sampling of the workplace atmosphere to determine employee exposure levels,
- to conduct pre-assignment or periodic medical surveillance of exposed employees,
- to provide medical treatment to exposed employees,
- to select or assess appropriate personal protective equipment for exposed employees,
- to design or assess engineering controls or other protective measures for them, or
- to conduct studies to determine the health effects of exposure.

The request must explain in detail why this disclosure is essential and that, without it, even when provided with information on the properties and effects of the chemical, on measures for controlling workers' exposure, and on methods of monitoring and analyzing worker exposure to the chemical and of diagnosing and treating harmful exposures to the chemical, the health professional, employee or designated representative could not provide appropriate occupational health services.

The request must in addition include a description of the procedures to be used to maintain the confidentiality of the disclosed information and a written agreement (approved by the employer) that the health professional, employee, or designated representative will not use the trade secret information for any purpose other than the health need(s) asserted and agrees not to release the information under any circumstances other than to OSHA.

The confidentiality agreement may restrict the use of the information to the health purposes indicated in the written statement of need and provide for appropriate legal remedies in the event of a breach of the agreement (including stipulation of a reasonable pre-estimate of

likely damages), but it may not require the posting of a penalty bond.

## Denial of Request for Disclosure

If the employer denies a written request for disclosure of a specific chemical identity, the denial must be provided, in writing, to the health professional, employee or designated representative within 30 days. It must:

- include evidence to support the claim that the chemical identity is a trade secret,
- state the specific reasons why the request is being denied, and
- explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

The health professional, employee, or designated representative whose request for information is denied may refer the request and the written denial to OSHA for consideration. The employer will be subject to citation if OSHA determines:

- that the specific chemical identity requested is not a bona fide trade secret, or
- that it is a trade secret but the requesting health professional, employee or designated representative:
  - has a legitimate medical or occupational health need for the information,
  - has provided a written confidentiality agreement, and
  - has shown adequate means for complying with its terms.

If an employer demonstrates to OSHA that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, OSHA may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health needs are met without an undue risk of harm to the employer.

### **Disclosure to OSHA**

Notwithstanding the existence of a trade secret claim, an employer must, upon request, disclose to OSHA any information the employer is required to make available. A trade secret claim must be made no later than the time the information is provided to OSHA so that suitable determinations of trade secret status can be made and the necessary protections implemented. Employers are not required to disclose under any circumstances any process or percentage of mixture information which is a trade secret.

If a health professional, employee or designated representative receiving trade secret information decides that there is a need to disclose it to OSHA, the employer who provided the information must be informed by the health professional no later than at the time of the disclosure.

### **PROXY COMPLIANCE**

Employers are ultimately responsible for compliance, but specific activities may be carried out in their behalf by physicians or other health care personnel in charge of employee medical records.

Authorization Letter for the Release of Employee Medical Record  
Information to a Designated Representative (Non-mandatory)

I, \_\_\_\_\_, (full name of worker/patient) hereby authorize \_\_\_\_\_ (individual or organization holding the medical records) to release to \_\_\_\_\_ (individual or organization authorized to receive the medical information), the following medical information from my personal medical records:

\_\_\_\_\_  
\_\_\_\_\_

(Describe generally the information desired to be released).

\_\_\_\_\_  
\_\_\_\_\_

I give my permission for this medical information to be used for the following purpose: \_\_\_\_\_, but I do not give permission for any other use or re-disclosure of this information.

\_\_\_\_\_  
\_\_\_\_\_

(Note: Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year); (2) describe medical information to be created in the future that you intend to be covered by this authorization letter; or (3) describe portions of the medical information in your records which you do not intend to be released as a result of this letter.)

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Full name of Employee or Legal Representative

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Signature of Employee or Legal Representative

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Date of Signature